



BAY AREA RAPID TRANSIT POLICE DEPARTMENT

Office of Internal Affairs

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www.bart.gov/police

DATE: March 3, 2015

TO: Internal Affairs File IA2014-019

FROM: Lieutenant Lance Haight

SUBJECT: Administrative Investigation, IA2014-019

Involved Employee:

Officer Deborah Erdy (Retired)

Allegations:

Truthfulness

Policy/Procedure

Date, Time and Location of Incident:

January 21, 2014, at about 1415 hours, 6450 Dougherty Road in Dublin, CA

Police Report: 1401-3215

BACKGROUND

On January 21, 2014, at about 1403 hours, Officer Deborah Erdy responded to the scene of an officer involved shooting, in which BART Police Sergeant Thomas Smith was fatally shot. Erdy arrived on scene and was later tasked with following witness officer, Pablo Chamorro, to Dublin Police Department. Erdy was then asked to sit with Officer Chamorro at Dublin PD until his interview with Dublin PD investigators.

Along with four other officers who responded to the scene and transported involved officers, Erdy was asked to write a supplemental report regarding her involvement with the witness officers.

It was later discovered that Officer Erdy's police report was not in agreement with an AXON video recording from the scene. An administrative investigation was initiated regarding the discrepancy between the video and Erdy's report.

The Office of Internal Affairs has been assigned to investigate the administrative allegations. This investigation will focus on any policy violations with regard to truthfulness and/or policy/procedure on the part of Officer Erdy. I, Lieutenant Lance Haight, have taken the assignment to conduct this investigation.

INVESTIGATION – STATEMENTS AND EVIDENCE

Supplemental Police Report:

All transport and escort officers were instructed to write a supplemental report detailing their interaction with involved officers. Officer Erdy wrote the following narrative:

On 01/21/14 at 1403 HRS I responded to 6450 Dougherty Road #1714 in the city of Dublin on a report of a BART Officer that was shot during a probation search of that residence.

Upon my arrival there were numerous Dublin P.D. units on scene. A Paramedics Plus ambulance was leaving the location Code 3(emergency lights and sirens activated) with a Dublin P.D. Unit following them.

I saw Officers Hamilton #124 and Chamorro #119 standing outside a yellow crime scene tape outside the residence. They were standing apart from each other.

Sergeant LaPerle of the Dublin Police Department approached me and requested that I follow a Dublin P.D. Unit which would transport Officer Chamorro to the Dublin P.D. Police Station and to sit with him while he was waiting for his interview.

Officer Chamorro was then transported to Dublin P.D., 100 Civic Plaza, in a Dublin P.D. patrol vehicle which I followed.

I sat in a squad room with Officer Chamorro, Officer Zendejos#146, and a Dublin P.D. Officer.

Zendejos then responded to Eden Hospital, and I stayed with Officer Chamorro until his interview.

While I was present, Officer Chamorro did not discuss the probation search incident.

I stayed with Officer Chamorro until approximately 2200 HRS.

Nothing Further.

AXON Video:

Officer Chamorro activated his AXON video recorder in the aftermath of the officer involved shooting. The following segment pertains to this investigation:

At the 13:09 minute mark in the video, Officer Erdy walks into view. (The ambulance has already left the scene.) Erdy approaches Chamorro and the following dialogue takes place:

Erdy: Are you in FTO?

Chamorro: Yes, ma'am

Erdy: Oh, I'm Deborah Erdy

Chamorro: (inaudible) meet you

Erdy: What's your name?

Chamorro: Pablo Chamorro

Erdy: Sorry you had to come to something like this.

Chamorro: We were actually – we were part of it.

Erdy: Oh

Erdy disengages from Chamorro and then approaches him again at the 17:06 minute mark. The following dialogue takes place:

Erdy: You look like you're not alright; you guys [sic] need some water or something? (Erdy was speaking only to Chamorro.)
Chamorro: (inaudible) Thank you though ma'am.
Erdy: Okay

After a brief pause, Erdy then begins speaking in a hushed tone. There are no other persons visible in the immediate area participating in the conversation.

Erdy: Where was he shot?
Chamorro: (appears to make gestures with his hands, but his verbal response is not audible on the recording, Erdy watches)

Erdy: The arm? (pause) Didn't look good? Was it a detective who shot him?

(Chamorro's response is inaudible. Erdy nods her head.)

Chamorro: Maybe shock, maybe shock.
Erdy: Yeah (inaudible) by accident?
Chamorro: Yeah (inaudible)
Erdy: Sorry you had to see this on FTO

Erdy then walks out of camera view.

An ACSO deputy engages Chamorro in conversation and tells him that he is a peer support counselor. They have a brief conversation, but they do not discuss the incident.

End of video.

Investigator's Notes:

The discrepancy between Erdy's police report and the AXON video is as follows: Erdy wrote the following in her police report, "*While I was present, Officer Chamorro did not discuss the probation search incident.*" The AXON video shows that Erdy asked Chamorro questions about what happened and that Chamorro responded with the above listed information.

Internal Affairs notified Officer Erdy of the allegations against her on February 7, 2014, and she was notified of an interview scheduled for February 14, 2014. Officer Erdy filed an industrial injury claim on February 10, 2014.

Internal Affairs contacted Erdy through her attorney, Erich Knorr, and requested an interview regarding this investigation. Internal Affairs was advised that Erdy would not be available for an interview while she was on industrial injury leave. The length of Erdy's leave was unknown at the time.

Erdy was advised on February 28, 2014, that the investigation would be tolled pending her release from industrial injury leave.

Officer Erdy was granted a disability retirement effective October 31, 2014. Internal Affairs contacted attorney Knorr and requested an interview with Erdy following her retirement. Knorr advised that Erdy would not avail herself for an interview as it would hinder her ongoing treatment.

Subject: Officer Deborah Erdy

Officer Erdy was not available for an interview at any point during this investigation. Subsequently, the findings of this investigation will be determined without the benefit of a statement from Erdy.

POLICY AND PROCEDURE:

The following policies pertain to this investigation:

Operations Rules and Procedures Manual, section 1703:

No employee shall knowingly falsify any official report, or knowingly enter, or cause to be entered, any inaccurate, false, or improper information on the books, reports, logs or records of the District. Employees shall not withhold information, or fail to give all the facts to those authorized to receive information regarding unusual events, accidents, personal injuries, or rule violations.

Policy 201, General Duty Regulations and Conduct

201.2.9 Conduct which may Result in Discipline

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient department service:

- i. The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper or document.
- o. Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on- or off-duty.
- p. Failure to disclose or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form or during the course of any work-related investigation.
- ad. Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

SUMMARY AND CONCLUSION

Officer Erdy responded to the scene of the officer involved shooting on January 21, 2015, at 6450 Dougherty Road in Dublin, California. While on scene, Erdy asked Chamorro questions about the incident and Chamorro replied with the information outlined in this report. Their conversation was recorded on Chamorro's AXON Flex video. It should be noted that Erdy asked Chamorro the questions in a hushed tone, which appears to show that she did not want others to hear what she was asking. It appears as though Erdy knew she should not have been discussing the incident with Chamorro.

Erdy was instructed to write a police report regarding her interaction with involved officers. Erdy wrote the following in her police report, *"While I was present, Officer Chamorro did not discuss the probation search incident."*

An administrative investigation was initiated regarding the accuracy and truthfulness of Erdy's report, due to discrepancy between her report and what was recorded on AXON Flex video. Erdy was advised of the allegations against her and of a scheduled interview. Erdy filed an industrial injury claim prior to her interview, did not return to work, was granted a disability retirement, and she did not submit to an interview with Internal Affairs.

This investigation was concluded without the benefit of an interview of Officer Erdy.

RECOMMENDATIONS

After reviewing the case and based on the preponderance of evidence, the Office of Internal Affairs make the following recommendations of finding:

As to the allegation of Policy/Procedure (documenting false information in a police report) on the part of Officer Erdy, the recommended finding is **Sustained**:

- Erdy wrote the following in her report, "*While I was present, Officer Chamarro did not discuss the probation search incident.*"
- The AXON video shows that Erdy asked Chamarro questions about what happened and that Chamarro responded with information about the incident as outlined in this investigation.
- It appears as though Officer Erdy knowingly entered false information into her police report.

As to the allegation of Truthfulness (the falsification of any work-related records, the making of misleading entries or statements with the intent to deceive) on the part of Officer Erdy, the recommended finding is **Sustained**:

- Officer Erdy wrote false information in her police report.
- It should be noted that Erdy asked Chamarro questions about the incident in a hushed tone, which appears to show that she did not want others to hear what she was asking.
- It appears as though Erdy felt she should not have been discussing the incident with Chamarro.
- It appears as though Erdy knowingly denied discussing the incident in her police report in an attempt to hide the fact that she had discussed the incident with Chamarro.
- Because Erdy did not avail herself for an interview with Internal Affairs, she has offered no explanation of the information in her police report. Internal Affairs has not been presented with any information to refute that Officer Erdy was intentionally untruthful.

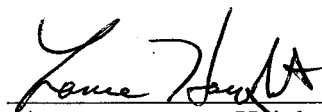
EXHIBITS


The following is a list of evidence as it relates to this investigation:

- A. AXON Flex Video
- B. Supplemental police report written by Officer Erdy
- B. Email Correspondence
- C. Documents regarding Officer Erdy's retirement

CASE DISPOSITION

EMPLOYEE	ALLEGATION	POLICY	FINDING
Officer Erdy (retired)	Policy/Procedure (documenting false information in a police report)	ORP 1703	Sustained
	Truthfulness	201.2.14(i) 201.2.14(o) 201.2.14(ad)	Sustained


Lieutenant Lance Haight 3/13/15
Date


Deputy Chief Janeith Glenn-Davis 3/19/15
Date


Chief Kenton W. Rainey 3/24/15
Date